IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 32539 of 2006(W)

PETITIONER:

M/S. KANCOR INGREDIENTS LIMITED,
KANCOR ROAD, ANGAMALY SOUTH - 683 573,
REPRESENTED BY ITS VICE PRESIDENT
(CORPORATE FINANCE), SRI. V.MURALEEDHARAN.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.MITHUN MARKOS

RESPONDENTS:
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1. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, M.G.ROAD,
ERNAKULAM.

2. THE DIRECTOR OF INDUSTRIES & COMMERCE,
GOVERNMENT OF KERALA, SECRETARIAT,
TRIVANDRUM.

3. THE TAHSILDAR,
ALUVA.

4. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

5. MOTHER'S AGRO FOODS PVT. LTD.,
INDUSTRIAL DEVELOPMENT AREA, ANGAMALY SOUTH,
REPRESENTED BY ITS MANAGING DIRECTOR,
MR. VARKEY PETER.

6. KERALA STATE POLLUTION CONTROL BOARD,
PATTOM POST, TRIVANDRUM-695 004,
REPRESENTED BY ITS CHAIRMAN.

BY ADV. SRI.M.P.ASHOK KUMAR FOR R5
SRI.M.K.CHANDRA MOHANDAS,SC,POLL.C.BOARD
GOVERNMENT PLEADER SRI.NANDAKUMAR FOR R1 TO R4
SRI.N.N.SUGUNAPALAN (SR.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON 26/09/2007 DELIVERED THE FOLLOWING:

WPC NO.32539/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF LAND ASSIGNMENT ORDER DATED 13.2.1970.

EXT.P2: TRUE COPY OF PATTA DATED .5.70.

EXT.P3: TRUE COPY OF PATTA DATED .5.70.

EXT.P4: TRUE COPY OF HIRE PURCHASE AGREEMENT DATED 7.7.1971.

EXT.P5: TRUE COPY OF LETTER FROM 1ST RESPONDENT TO THE PETITIONER DATED 9.9.1983.

EXT.P6: TRUE COPY OF PETITIONER'S REPLY DATED 15.11.1983.

EXT.P7: TRUE COPY OF THE LETTER FROM THE 1ST RESPONDENT TO THE PETITIONER DATED 6.8.1984.

EXT.P8: TRUE COPY OF THE PETITIONER'S REPLY DATED 20.8.1984.

EXT.P9: TRUE COPY OF LETTER BY THE PETITIONER TO RESPONDENT NO.1 DATED 14.1.1985.

EXT.P10: TRUE COPY OF LETTER FROM 1ST RESPONDENT TO THE PETITIONER DATED 8.5.1985.

EXT.P11: TRUE COPY OF LETTER FROM 1ST RESPONDENT TO THE PETITIONER DATED 8.5.1985.

EXT.P12: TRUE COPY OF THE PETITIONER'S REPLY DATED 28.5.1985.

EXT.P13: TRUE COPY OF LETTER FROM PETITIONER TO THE 1ST RESPONDENT DATED 14.5.1986.

EXT.P14: TRUE COPY OF THE ORDER DATED 13.11.987 PASSED BY THE 1ST RESPONDENT CANCELLING ALLOTMENT OF 12 ACRES.

EXT.P15: TRUE COPY OF THE GOVERNMENT ORDER GO(MS) 15/79/PA&ARD DATED 2.7.1979.

EXT.P16: TRUE COPY OF LETTER SENT BY PETITIONER TO THE 1ST RESPONDENT DATED 24.11.1987.

EXT.P17: TRUE COPY OF LETTER REF.X. LAND 051 DATED 25.6.90 SENT BY PETITIONER TO 1ST RESPONDENT.

EXT.P18: TRUE COPY OF JUDGMENT DATED 23.11.90 OF THIS HON'BLE COURT IN OP NO.10022/1987.

EXT.P19: TRUE COPY OF ORDER DATED 19.1.1991 ISSUED BY THE 2ND RESPONDENT.

EXT.P20: TRUE COPY OF ORDER DATED 9.5.1996 OF THE 1ST RESPONDENT.

EXT.P21: TRUE COPY OF LETTER DATED 3.6.1996 FROM THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P22: TRUE COPY OF LETTER DATED 26.6.1996 FROM THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P23: TRUE COPY OF LETTER DATED 12.2.97 FROM THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P24: TRUE COPY OF ORDER NO.B2/507/97 DT.13.2.1997 ISSUED BY THE 1ST RESPONDENT.

EXT.P25: TRUE COPY OF THE AGREEMENT DATED 14.2.1997.

EXT.P26: TRUE COPY OF THE JUDGMENT DATED 29.9.1997 OF THIS HON'BLE COURT IN OP 2824/1997.

EXT.P27: TRUE COPY OF PROCEEDINGS DATED 1.7.2003 OF THE 2ND RESPONDENT.

EXT.P28: TRUE COPY OF THE DIRECTION DATED 23.8.2004 OF THE 6TH RESPONDENT.

EXT.P28(a): TRUE COPY OF CORRESPONDENCE BETWEEN THE PETITIONER AND THE 6TH RESPONDENT.

EXT.P29: TRUE COPY OF PROCEEDINGS DATED 29.8.2005 OF THE 1ST RESPONDENT.

EXT.P30: TRUE COPY OF LETTER DATED 22/5/06 OF THE PETITONER TO THE 1ST RESPONDENT.

EXT.P31: TRUE COPY OF THE PETITIONER'S LETTER OF 2.11.2006 ALONG WITH ANNEXURES ACKNOWLEDGED BY THE PANCHAYATH ON 22.11.2006.

EXT.P32: TRUE COPY OF THE PROCEEDINGS DATED 16.11.2006 OF THE 1ST RESPONDENT.

EXT.P33: TRUE COPY OF LETTER DATED 4.12.2006 FROM THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P34: TRUE COPY OF THE BILL DATED 8.12.2006 OF THE ENGINEERING CONTRACTOR.

<u>EXHIBITS OF R5:</u>

EXT.R5(a): THE PHOTOCOPY OF THE LETTER DATED 19.10.2006.

EXT.R5(b): THE PHOTOCOPY OF THE ORDER DATED 30.11.2006.

EXT.R5(c): THE PHOTOCOPY OF THE LETTER DATED 30.11.2006 ISSUED BY THE 1ST RESPONDENT TO THE TAHSILDAR, ALUVA.

EXT.R5(d): THE PHOTOCOPY OF THE CHARGE LIST SHOWING THE HANDING OVER THE PROPERTY.

EXT.R5(e): THE PHOTOCOPY OF THE SURVEY SKETCH SHOWING THE PROPERTY ALLOTTED TO THE 5TH RESPONDENT.

EXT.R5(f): THE PHOTOGRAPH SHOWING THE STAGE OF FENCING AT 11 AM.

EXT.R5(g): THE PHTOGRAPH SHOWING THE STAGE OF FENCING AT 3 PM

EXT.R5(h): THE PHOTOGRAPH SHOWING THE STAGE OF FENCING AT 5 PM

EXT.R5(i): THE PHOTOCOPY OF THE COMPLAINT DATED 16.12.2006.

EXT.R5(j): THE PHOTOCOPY OF THE ACKNOWLEDGEMENT CARD ISSUED BY THE 1ST RESPONDENT.

EXT.R5(k): THE PHOTOCOPY OF THE ACKNOWLEDGMENT CARD ISSUED BY THE 2ND RESPONDENT.

EXT.R5(l): THE PHOTOCOPY OF THE ACKNOWLEDGMENT CARD ISSUED BY THE SP OF POLICE, RURAL, ALUVA.

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO.32539 OF 2006
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Dated this the 26th day of September, 2007

J U D G M E N T

Writ petitioner has approached this Court seeking to quash Ext.P32 order of the 1st respondent and to direct respondents to assign and register to the petitioner the lands covered by Ext.P4 Hire Purchase Agreement. Further an order restraining the respondents from resuming the land covered by Ext.P4 agreement from the petitioner is also sought for.

2. However, when the matter was heard, the Learned Counsel for the writ petitioner confined his prayer to direct the 2nd respondent to reconsider the proceedings leading to Ext.P32.

3. On 13.02.1970, Ext.P1 order was issued by the 4th respondent assigning 8 acres of land in the Development Area to M/s.Bombay Oil Industries Pvt. Ltd., (hereinafter referred to as the 'Company') for industrial purposes subject to the rules for assignment of government land in development areas for industrial purposes. Ext.P4 is an agreement entered into between Bombay Oil Industries Pvt. Ltd., and the 4th respondent, whereunder, 15.80 acres of land was given on hire purchase basis for the establishment of a pepper oleoresin plant, a plant for capsicum and other spices, chlorinated rubber and other likely expansions. It is stated that in terms of Exts.P1 and P4 entire

amount that is due to the 4th respondent has been paid by the Company.

4. While the company was thus enjoying the 23.84 acres of land, finding that there was surplus unutilized land in its possession and calling upon them to show cause why action for resuming the unutilized land should not be taken, the 1st respondent issued Ext.P7 on 06.08.1984. Reply was filed and thereafter by Ext.P10 dated 08.10.1985, the company was directed to surrender 12 acres of land. Even thereafter, communication where exchanged between the parties and finally Ext.P14 order dated 13.11.1987 was issued by the 1st respondent, cancelling the provisional allotment of 12 acres of land and ordering to resume possession of the same with immediate effect.

5. This order was challenged before this Court in O.P.No.10022 of 1987 and the original petition was disposed of by Ext.P8 judgment directing the 2nd respondent to examine the claim put forward by the petitioner after affording it an opportunity of being heard in the matter. Accordingly, the matter was reconsidered by the 2nd respondent and by Ext.P12 order dated 19.01.1991, the petitioner was permitted to retain the entire 12 acres of land. The order makes reference to a time frame of 3 phases submitted by the petitioner, for utilization of the entire land, by completing the first, second and third phases in 1991, 1993 and 1995 respectively. It was further ordered that

if the company failed to utilize the land before 1995 the 1st respondent can take appropriate action for its resumption.

6. Nothing happened thereafter and the land remained unutilized. As a result of this, the 1st respondent issued Ext.P20 dated 09.12.1996 ordering to resume possession of 7.5 acres of unutilized land. To this order the company submitted Ext.P21 contending that the 7.5 acres mentioned in Ext.P20 was set apart for various programs including Effluent Treatment and other pollution control measures. It was also stated that the portion which was intended to be utilized for further expansion could not be made use of due to liquidity problems and the delay in identifying a suitable method for controlling the effluents. It was further stated that the company intended to utilize the balance land for expansion of Effluent Treatment, Water Lagoon, Drying Yard, Green Belt, Canteen Building, Workers Rest Room etc. Meantime, steps were also taken by the respondents for assignment of 5 acres out of the 7.5 acres, proposed to be resumed from the petitioner, to M/s. Powerloom Industrial Co-operative Society.

7. The petitioner challenged Ext.P20 in O.P.No.2824 of 1997 before this Court and the case was disposed of by Ext.P26 judgment. On the basis that while issuing Ext.P20, the 1st respondent did not apply his mind, this court quashed Ext.P20 and directed the 2nd respondent to examine the claims of the petitioner after affording it a reasonable opportunity of being

heard in the matter. In pursuance to Ext.P26 judgment, the 2nd respondent considered the case of the petitioner and issued Ext.P27 proceedings dated 01.07.2003 allowing the petitioner to retain 6 out of 7.5 acres of land already resumed from it for the implementation of their expansion project of seasoning and curing of Vanilla. It was specifically ordered that the company shall utilize the land for expansion within a period of two years and that no further extension will be entertained. It was also directed that the 1st respondent shall resume the balance 1.46 acres of land and allot to prospective entrepreneurs as per the Land Allotment Rules.

8. Finding that despite the stringent conditions in Ext.P27, no effective steps for the utilization of the 6 acres of land for its expansion programme, Ext.P29 dated 29.08.2005 was issued by the 2nd respondent calling upon the petitioner to show cause why the land shall not be resumed without further notice. This was replied by the petitioner and the parties were heard by the 2nd respondent on 09.09.2005. Since orders were not passed thereafter, on 22.05.2006 petitioner submitted Ext.P30 to the 2nd respondent, which discloses that it was proposing to utilize the land for the construction of a second Effluent Treatment Plant and also a facility for drying of treated sludge. Petitioner also submitted that the Kerala State Pollution Control Board had recommended a facility for rain water harvesting in its premises and that the balance 4 acres available was very much required to

implement the proposals. Ext.P32 order was thereafter passed by the 1st respondent on 16.11.2006 to resume possession of 6 acres of the unutilised land from the petitioner with immediate effect. It is seeking to quash Ext.P32 order and for consequential reliefs that this writ petition was filed by the petitioner.

9. By order dated 07.12.2006, while granting stay, this Court directed the 1st respondent conduct an inspection of the land along with the officers of the Kerala State Pollution Control Board and find out whether pollution control equipments can be relocated for surrender of land and whether the petitioners objection was tenable. In terms of the said order, the 1st respondent inspected the premises and submitted its report. In so far as the plot of 2.5 acres ordered to be resumed in Ext.P32 is concerned, it was stated that this portion was vacant and unutilized except for a waste burning hearth of negligible appreciation and that there was no overlapping with any of the investments made by the company. It was stated that the company has already established a good Effluent Treatment Plant and pollution control measures and that the contentions of the company were misleading and exaggerated. In so far as the other plot of 3.5 acres is concerned, it was reported that there is no overlapping of investment made by the company. Referring to the proposal for utilization of the land, the 1st respondent stated that after the order dated 07.12.2006 the company had submitted an application for permission to establish, a resin

seasoning plant, granulation plant, essential oil plant and rain water harvesting, which were doubtful. Report concludes by saying that if the company has any such proposal it can utilize the entire unutilized vacant land of 8 acres which is in their possession. After considering the report thus submitted by the 1st respondent, interim order passed on 07.12.2006 was vacated by this Court by order dated 23.01.2007. That order was challenged in W.A.No.224 of 2007 in which an order of status quo was passed and was extended thereafter. Finally, the writ appeal was disposed of by judgment dated 15.06.2007, directing that the interim order in the writ appeal shall continue till the writ appeal is finally disposed of.

10. It is in the aforesaid factual back ground that I have to appreciate whether circumstances warrant interference with Ext.P32, to direct reconsideration of the matter by the 2nd respondent.

11. The admitted facts of this case are that way back in 1970, 23.80 acres of land was allotted to the company for industrial purposes. In 1987, when by Ext.P14, 12 acres of the land was proposed to be taken over, that was set aside in the judgment in O.P.No. 10022 of 1987. At the time when the issue was reconsidered as directed by this Court, the company submitted its proposals which are incorporated in Ext.P19 dated 19.01.1991. The company should have completed the 3 phases of expansion by 1991, 1993 and 1995. This was accepted by the

government and the company was allowed to retain the 12 acres of land ordered to be resumed making it clear that if the entire land was not utilized before 1995, appropriate action will be taken.

12. The expansion proposed by the company admittedly did not materialize and this resulted in Ext.P20 dated 09.05.1996. On that occasion also consequent to Ext.P26 judgment in O.P.No. 2824 of 1997 the matter was reconsidered by the 2nd respondent who issued Ext.P27 on 01.07.2003, permitting the company to retain 6 acres of land out of the 7.5 acres of land resumed by Ext.P20. As against the proposals made by the company on the basis of which Ext.P19 order was issued, on this occasion proposal of the company was to establish a project for seasoning and curing of Vanilla. This again was accepted by the 2nd respondent with a direction that the expansion will be completed within two years subject to the condition that request for further extension will not be entertained. Though the two year period expired long ago the company has no case that they had even applied for extension of time or taken any action for the establishment of the plant for seasoning and curing of Vanilla.

13. This led to the issuance of Ext.P21 dated 29.08.2005. On this occasion when the company submitted Ext.P30, they relied on a recommendation alleged to have been made by the Kerala State Pollution Control Board for the establishment of a

second Effluent Treatment Plant and a facility for rain water harvesting. At the same time, Ext.P31 letter dated 02.11.2006 is alleged to have been submitted by the company to the Nedumbassery Grama Panchayat wherein they have sought approval of drawings of their proposed Oleoresin Seasoning Plant, Granulation Plant and Essential Oil Plant.

14. Thus, the admitted facts show that the land mentioned in Ext.P32 remains unutilized since 1970. Whenever action is initiated by respondents 1 and 2 for resumption of the land, the company immediately made, a proposal for its utilization. At the time when each of these orders were issued, the company has been submitting different proposals and has ultimately ended up by saying that it wants to build a second Effluent Treatment Plant and a water harvesting facility, while approval of the Panchayat sought is for a totally different purpose.

15. Even after more than 35 years of its allotment, if the company has not utilized the land allotted for industrial purposes, that evidently makes it a case of violation of the rules of allotment, for which the respondents are perfectly justified and competent in taking action against the company. In this case on more than 3 occasions indulgence has been shown to the company and they had sufficient opportunity to make use of the land and this having not done in the last more than 35 years, I am constrained to observe that the interest of the company is not to set up an industrial unit but in retaining large extent of land which

it got at concessional rate. This cannot be allowed especially when there are several applicants waiting for allotment.

16. At this stage, I need only examine whether Ext.P32 is valid when it was issued. Respondents can justify Ext.P32 if it is found that there is a violation of Ext.P27 order of the 2nd respondent. As already noticed the Vanilla project mentioned in Ext.P27 never materialized and it is not the case of the petitioner that it wanted to utilize the land for the said purpose. That apart Ext.P27 required the petitioner to complete the expansion within two years, and it was made clear that failure to do so will entitle the 1st respondent to take action against the petitioner. Thus the project did not materialize and the period prescribed has expired and even an extension of time was not sought or granted. Thus, the admitted position is that Ext.P27 has not been complied with, in which event, the respondents are perfectly justified in issuing Ext.P32.

17. In Ext.P32 it is stated that after dropping the expansion proposal mentioned in Ext.P27, the company had yet another proposal for utilising the vacant land and that it had not produced any valid and convincing document to substantiate the same. Counsel for the writ petitioner contended that this finding in Ext.P32 was factually incorrect. According to the learned counsel, they had submitted Ext.P31 alternate proposal, in response to the meeting they had with the 2nd respondent. Reference was made to Ext.P31, an application for approval of drawing submitted to the

Secretary of Nedumbassery Grama Panchayat. On going through Ext.P31, it is evident that the project proposed is totally different from what is mentioned in Ext.P27. That apart Ext.P31 does not contain any concrete proposal.

18. Further referring to the report submitted by the Kerala State Pollution Control Board in pursuance to the order dated 07.12.2006, it was submitted that in terms of the report itself it has been recognized that the company may require this additional extend of land also. This in my view is not a correct appreciation of what is stated in the report of the Kerala State Pollution Control Board. Thus, the land in question is admittedly lying unutilized and this entitled the 1st respondent to take possession. If that is the legal position there is nothing warranting the interference of this Court. It was argued the 5th respondent has not done any work in the land. This may render them ineligible to hold the land, but will not entitle the petitioner to contend that for that reason, it should be allowed to retain the land, despite its lapses.

The writ petition therefore lacks merit and is dismissed.

ANTONY DOMINIC, JUDGE.

Rp